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DEPARTMENT OF
PUBLIC DISCUSSION AND DEBATE
THE INITIATIVE AND REFERENDUM

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- 1. The Initiative and Referendum.

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THE INITIATIVE AND REFERENDUM

Question: Resolved that the Initiative and Referendum constitute a valuable improvement in our legislative system.

NOTE: In this bulletin four articles on each side are reproduced. For lack of room the remainder of the discussion has been reduced to brief statements or "points" on both sides. These are purposely not arranged in logical order; the debater must do that. Debaters are urged to follow carefully the instructions and methods suggested in our bulletin on "Public Discussion and Debate." Let the aim be not so much to debate this question as to learn how to debate.

An extensive bibliography has been prepared and will be furnished free to all who request it.

ABOUT TRUSTING THE PEOPLE'S JUDGMENT

Editorial: World's Work 21: 14437-14438. June, 1911. (Affirmative).

It is generally agreed and universally known that the people in many states have little direct voice in nominating (let us say) members of a legislature. Except when there is a great public scandal, such as the investigation of life-insurance companies revealed several years ago in New York, the people have so little influence in shaping legislation that in most states they have lost interest in it. Groups of men, bosses, and political managers, the special interests and the privileged classes do what they will.

And this is the chief reason why the power and influence of state governments have waned. We complain of the ever-growing activity of the Federal Government, when every observant man knows that one of the chief reasons for the concentration of political power is the decline of local political power. The state governments neglect their duties and more and more the Federal Government assumes them.

Now, one of the best results of the initiative and referendum in Oregon has been to put new life into the state government—into all local government. As soon as the people find themselves able (in fact obliged) to give attention to their local problems, indifference ceases. They take an eager and active interest in public affairs. Local government takes on a new kind of life. The necessity of keeping informed on public questions prevents the political stagnation of the people.

Again, it is said that the initiative and referendum abolish representative government. They have shown a strong tendency to abolish the government that represents special groups

of men—yes, decidedly. They really restore the government that represents the people. If government is again to become **really** representative, some such machinery is necessary.

These criticisms of the new measures of popular control are interesting because of the sources from which they come. They come from one class of men and of journals which are sincerely unwilling to trust the people at the polls, and they come from another class of men and journals which for selfish reasons are unwilling to trust the judgment of the people.

The judgment of the people is not infallible. Popular moods are often wrong. But after all, the judgment of the people is our court of last appeal; and throughout our history it has been found, whenever it has been tried, a thousand-fold safer than the judgment of small groups of men, especially of selfishly interested men. The surprising thing in the use that has thus far been made in the Western states and cities of the referendum and recall is the conservative temper of the voters that this use has revealed. They have time and again defeated radical proposals.

But, good or bad, this new machinery for expressing the popular will is making its way into popular favor with such rapidity as to make sure of a very general trial of it. Woodrow Wilson said in a recent speech at Norfolk, Va., that for twenty years he lectured to his students at Princeton University in criticism of the initiative and referendum, but that, after having watched the workings of these new methods, he was emphatically in favor of them and he wished to beg the pardon of his old students. There is an increasing number of such men—men who, from study of theory, reject this innovation, but who, when they see the practical results, approve of it.

The question raised is simply this: Shall the voice of the people be heard directly on political subjects and shall the judgment of the people be trusted? Or, is it better to go on with the old boss-system which thrives because it can be worked in spite of the people? The people's answer is not doubtful. And the men or the parties that stand in the way are in danger of being run over pretty quickly.

EXPERIMENTS IN GOVERNMENT.

Elihu Root. *The North American Review*, 198: 1-17. July, 1913. Abstracts (Negative).

There are two separate processes going on among the civilized nations at the present time. One is an assault by Socialism against the individualism which underlies the social system

of Western civilization. The other is an assault against existing institutions upon the ground that they do not adequately protect and develop the existing social order. It is of this latter process in our own country that I wish to speak, and I assume an agreement that the right of individual liberty and the inseparable right of private property which lie at the foundation of our modern civilization ought to be maintained.

It is manifest that the laws which were entirely adequate under the conditions of a century ago to secure individual and public welfare must be in many respects inadequate to accomplish the same results under all these new conditions; and our people are now engaged in the difficult but imperative duty of adapting their laws to the life of the day. The changes in conditions have come very rapidly and a good deal of experiment will be necessary to find out just what government can do and ought to do to meet them.

The process of devising and trying new laws to meet new conditions naturally leads to the question whether we need not merely to make new laws, but also to modify the principles upon which our government is based and the institutions of government designed for the application of those principles to the affairs of life. Upon this question it is of the utmost importance that we proceed with considerable wisdom.

When proposals are made to change these institutions there are certain general considerations which should be observed.

One is that free government is impossible except through prescribed and established governmental institutions, which work out the ends of government through many separate human agents, each doing his part in obedience to law. Popular will cannot execute itself directly except through a mob. Popular will cannot get itself executed through an irresponsible executive, for that is simple autocracy. An executive limited only by the direct expression of popular will cannot be held to responsibility against his will, because having possession of all the powers of government, he can prevent any true, free, and general expression adverse to himself, and unless he yields voluntarily he can be overturned only by a revolution. The familiar Spanish-American dictatorships are illustrations of this. A dictator once established by what is or is alleged to be public choice never permits any expression of public will which will displace him, and he goes out only through a new revolution because he alone controls the machinery through which he could be displaced peaceably. A system with a plebiscite at one end

and Louis Napoleon at the other could not give France free government; and it was only after the humiliation of defeat in a great war and the horrors of the Commune that the French people were able to establish a government which would really execute their will through carefully devised institutions in which they gave their executive very little power indeed.

We should, therefore, reject every proposal which involves the idea that the people can rule merely by voting, or merely by voting and having one man or group of men to execute their will.

A second consideration is that in estimating the value of any system of governmental institutions due regard must be had to the true functions of government and to the limitations imposed by nature upon what it is possible for government to accomplish. We all know, of course, that we cannot abolish all the evils in this world by statute or by the enforcement of statutes, nor can we prevent the inexorable law of nature which decrees that suffering shall follow vice, and all the evil passions and folly of mankind. Law can not give to depravity the rewards of virtue, to indolence the rewards of industry, to indifference the rewards of ambition, or to ignorance the rewards of learning. The utmost that government can do is measurably to protect men, not against the wrong they do themselves, but against the wrong done by others, and to promote the long, slow process of educating mind and character to a better knowledge and nobler standards of life and conduct.

In the nature of things all government must be imperfect because men are imperfect. Every system has its shortcomings or inconveniences; and these are seen and felt as they exist in the system under which we live, while the shortcomings and inconveniences of other systems are forgotten or ignored.

It is not unusual to see governmental methods reformed and after a time, long enough to forget the evils that cause the change, to have a new movement for a reform which consists in changing back to substantially the same old methods that were cast out by the first reform.

The recognition of shortcomings or inconveniences in government is not by itself sufficient to warrant a change of system. There should be also an effort to estimate and compare the shortcomings and inconveniences of the system to be substituted, for although they may be different they will certainly exist. * * * * *

The initiative and referendum are attempts to cure the evils

which have developed in our practice of representative government by means of a return to the old, unsuccessful, and discarded method of direct legislation and by rehabilitating one of the most impracticable of Rousseau's theories. Every candid student of our government affairs must agree that the evils to be cured have been real and that the motive which has prompted the proposal of the initiative and referendum is commendable. I do not think that these expedients will prove wise or successful ways of curing these evils for reasons which I will presently indicate; but it is not necessary to assume that their trial will be destructive of our form of government.

It is in the undertaking to have the ordinary powers of legislation exercised at the ballot box that the weakness of both initiative and referendum is shown. They are based upon a radical error as to what constitutes the true difficulty of wise legislation. The difficulty is not to determine what ought to be accomplished, but to determine how to accomplish it. The affairs with which statutes have to deal as a rule involve the working of a great number and variety of motives incident to human nature, and the working of those motives depends upon complicated and often obscure facts of production, trade, social life, with which men generally are not familiar and which require study and investigation to understand. Thrusting a rigid prohibition or command into the operation of these forces is apt to produce quite unexpected results. Moreover, we already have a great body of laws, both statutory and customary, and a great body of judicial decisions as to the meaning and effect of existing laws. The result of adding a new law to this existing body of laws is that we get, not the simple consequence which the words, taken by themselves, would seem to require, but a resultant of forces from the new law taken in connection with all existing laws. A very large part of the litigation, injustice, dissatisfaction, and contempt for law which we deplore results from ignorant and inconsiderate legislation with perfectly good intentions. The only safeguard against such evils and the only method by which intelligent legislation can be reached is the method of full discussion, comparison of views, modification, and amendment of proposed legislation in the light of discussion and the contribution and conflict of many minds. This process can only be had through the procedure of representative legislative bodies.

No system of self-government will continue successful unless the voters have sufficient public spirit to perform their own

duty at the polls, and the attempt to reform government by escaping from the duty of selecting honest and capable representatives, under the idea that the same voters who fail to perform that duty will faithfully perform the far more onerous and difficult duty of legislation, seems an exhibition of weakness rather than of progress.

SYMPTOMS OF NATIONAL DECAY AND THE REMEDY.

Wm. Preston Hill. Abstracts (Affirmative).

The Initiative and Referendum do not aim to abolish the representative form of government we now have, or substitute another in its place. It leaves our representative system just as it is, but guards it from abuse and from becoming misrepresentative. It will perform the same function as the safety valve on an engine. Silent and unnoticed when not needed, but most useful when the danger line is reached.

Two theories in regard to representative government have prevailed. One is that the representative is elected to think for the people. The other is that the people think for themselves and elect representatives to act for them. In this country we have adopted this last theory, because the people make their constitutions, and regulate and control their legislatures by constitutional provisions. Furthermore, our parties pledge their candidates to certain platforms, to which they must adhere after election, which shows that we believe that the representative is bound by the will of the people. If we believed that the representative was to do our thinking for us, we would not hamper or direct him with a platform.

The Referendum makes the people the real, instead of the nominal, masters. It takes away from the representatives the absolute, uncontrolled power they now often claim, and brings them under the control of the people, whose agents they are. The Referendum will make them the true responsible agents of the people, instead of the irresponsible masters they now sometimes become.

It applies to political life the well known and successful principles of business life. The reason that there is no trouble, in private life, to secure a faithful agent, is because the agent is at all times under the control of his principal, who can veto his acts or discharge him, if he finds him working against his interests. If a private business man should adopt the plan of electing his agent for a term of years and give him an irrevocable power-of-attorney to do what he liked with his business

and property during his term of office, it is self-evident that, at the end of the agent's term, the principal would, in the majority of cases, have no business or property left. Yet this is exactly what we have done under our representative system.

In adopting the Referendum therefore, we simply apply the well-known rules of business prudence to our political life.

Anyone can readily see that this amendment will practically put an end to the corruption that has invaded and dominated our political life. When we take away from our legislatures the power to finally dispose of, or sell, or give away anything without the reviewing vote of the people, then bribery will cease, because nobody will pay out money to those who cannot make final delivery of the desired legislation. When the acts of the legislature are liable to be reviewed at any time by the people, then the opportunities for rascality and corruption will have passed away. After the adoption of the Referendum the whole people alone will be able to make final delivery of franchises, legislation, etc.

Professor J. R. Commons, the well-known professor of Political Economy, says: "One of the most important issues before the American people today, is bribery. No reform movement, no citizens' union, or the like, can fully cope with it. The Referendum is the only complete and specific cure for this condition. It alone goes to the source of corruption. It deprives the law-makers and executives of their monopoly of legislation. After the adoption of the Referendum they can no longer deliver the goods."

It is not proposed that there shall be special elections. It is proposed that the initiative and referendum questions may be placed on the official ballot to be voted on at regular elections. It will therefore not increase the number of our elections or make them more cumbersome or burdensome than at present.

The expense and labor necessary to get up the petitions are a sure guarantee against its being used for any trivial reason. The percentage required to invoke either the initiative or referendum means that it is no easy task to invoke them.

Every citizen's sphere of thought and responsibility will be enlarged by the Referendum. With the reality of power comes the feeling of responsibility. The nation will become one great parliament. Each citizen who expects to vote on a new measure, must give it his attention, and thus grow in intellect, stability of character, and public spirit. Under the present system, the difficulty, almost hopelessness, of carrying any reform,

legislation against the interests of the great corporations and the politicians, tends to discourage our citizens from taking an active interest in public affairs.

An open door to popular discussion and decision disarms discontent and gives it a peaceful vent. It prevents its accumulation and draws it away from destructive methods of escape.

It will simplify and purify elections. It is much easier to vote upon measures than upon men. Each law will be adopted on its merits. Under this system a man will not have to vote for one or more things he does not approve of in order to vote for another thing he does favor. He will not, as under the present system, have to help elect some black-leg or trickster to the position of councilman, sheriff, legislator, etc., in order to save the tariff, free trade, free silver, sound money, or other policy in which he may believe. It frequently happens under the present system that neither one of the parties represents entirely the views of some voters. One voter, for instance, may favor: a reduction of the tariff (Democratic), a colonial policy (Republican), and public ownership of railroads (Democratic). If he votes for either one party or the other, under the present system, he must vote against some of the measures he favors. And his choice is often still more complicated by the nomination of candidates whom he does not consider fit to hold office on the very ticket he would like to vote for. Under the Referendum, however, each question being presented separately to his vote, he could voice his sentiments accurately on every point and could also vote for the best candidates regardless of their opinions on disputed issues.

It has been objected "that the people are not competent to vote on laws; that they might act rashly or be too easily swayed by a demagogue." This is not so much an objection to the Referendum as it is an objection to the whole theory of American government. Popular Sovereignty is the living spirit of our institutions. The American idea of justice holds that those who are to obey the law should have an equal voice in making the law. It was to guarantee this right that our representative government was established. But those who object to the Referendum, on the ground that the people might act rashly, seem to be wedded to the representative system, not because it gives the people a voice in their affairs, but because, to a degree at least, it thwarts the popular will. Apparently they prize the representative system because it sometimes fails of its purpose to give effect to the popular will. The advocates of the Refer-

endum, however, are better friends of the representative system. They prize it because, in spite of its defects, it sometimes reflects the popular will. We urge the initiative and referendum as safeguards of this system. By making it more directly answerable to the people, we hope to cure its defects, and prevent its perversion. We say with Lincoln: "Why should there not be a patient confidence in the people; is there any better or equal hope in the world?"

It has been objected against the referendum that the people will make mistakes. We admit that the people will sometimes make mistakes, but the minority will make mistakes, as well as the majority, and there is one important difference between their mistakes. The majority never intentionally make a mistake and when they do, they correct it as soon as they find it out, but the minority sometimes find it so profitable to make mistakes at the expense of the majority, that they are slow to correct them.

The Referendum is already a fundamental fact in American government and a settled principle in our legislative system. It does not require the adoption of any new principle or method. Both the Initiative and Referendum have been in constant use in America ever since the Mayflower crossed the sea. All that is needed is an extension of established principles and methods to cases quite as much within their scope as those to which they are now applied. In the old New England town meeting we have the ideal democracy in respect to local affairs. Any citizen could make a motion or enter the discussion and all could vote. The town meeting is the initiative and referendum applied to town business. The famous historian, John Fiske, called it "the best political training-school in existence."

It has been the universal practice in America to use the Referendum in making and amending our Constitutions, which shows that our citizens are already convinced that it is the best possible plan of legislation since it is the one they adopt in respect to their highest and most important laws. But objections to the Referendum are best answered by the experience of communities where it has been given a trial. Arguments are no longer necessary, for it is now possible to judge it by its fruits.

Fifty years ago Switzerland was infested with class rule, political turmoil and corruption, profligacy and plunder of the people's rights. Today, after twenty-five years' experience of the Referendum, it is the best governed country and the most ideal democracy of the world. Professor Charles Boregeaud, of

the University of Geneva, says of the Referendum: "It has won its case. Unquestionably it has proved a boon to Switzerland and has no more enemies in the generation of today." Hon. Numa Droz, the venerable statesman and ex-president of the Swiss Republic, says: "Under the influence of the Referendum, a profound change has come over the spirit of both parliament and people. It has abolished corruption."

It has been successful in the United States where it has been tried; in South Dakota, Utah, Illinois, Oregon, Nevada, Oklahoma, and others. It would be difficult to chronicle the progress that has been made in applying this principle to municipal affairs, so many are the city charters that now contain some provision for the Referendum. In many of the cities where it has had full and fair application, it has routed the forces of corruption and given the people an honest government for the first time in their history.

In Cincinnati, one application of the Referendum saved the people \$222,000. which the politicians were preparing to loot. In 1906, the corrupt politicians had conspired to sell the railroad to Chattanooga which Cincinnati owns; but the sale had to be ratified by the direct vote of the people and they promptly turned down the conspiracy of their legislative assembly. Subsequently the people ratified a sixty year lease of the road on terms which gave the city \$222,000 more than the previous proposition would have realized. These are startling figures and should teach us a profound lesson.

The question of Direct Legislation, therefore, is equivalent to the questions: Ought the people's will to govern all the time, or only a part of the time? Shall the ascertainment and execution of the people's will be made as easy and perfect as possible, or shall it continue imperfect and difficult?

The business of the corporation lobbyist, and the legislative blackmailer is to secure bad laws and obstruct good ones. By the Referendum the people will be able to defeat bad laws and by the Initiative they will be able to overcome the obstruction to good laws. It is therefore, the most important "next step" in political reform in this country. To deny the Initiative and Referendum is to deny self-government: to affirm self-government is to affirm the Initiative and Referendum.

THE INITIATIVE AND REFERENDUM.

James Boyle. Abstracts from the "Initiative and Referendum." (Negative).

In principle and practice the initiative and referendum is revolutionary, in that it is opposed to the established representa-

tive system of our American Government. Of course it will not be disputed that the Constitution of the United States provides for the representative system of legislation in the Federal Government. Neither can it be disputed that the Fathers deliberately chose this system, after giving due consideration to other forms, including direct legislation, as was then being expounded by Rousseau.

The principles and practical effects of the initiative and referendum are reactionary as well as revolutionary. Those who advocate direct legislation are "retrogressives," not "progressives." They have their faces and feet turned not to the future, but to the past,—and that past is strewn with the wrecks and failures of pure democracy. It is admitted that the "moot" of Old England and the town meeting of New England are equally unsuited to the conditions of today. So the retrogressives have adopted the Swiss system of making laws by ballot, entirely ignoring the great differences in the government and the political, social, and geographical conditions of Switzerland as compared with those of the United States.

The initiative and the referendum are really two distinct propositions, founded on antagonistic principles. The initiative is based on the principle that a minority of voters—generally 8 per cent—shall be given the right not only to initiate constitutional amendments or statutory laws, but to decide the exact form in which they shall be presented for passage, without giving the vast majority of the voters—92 per cent—either directly or through their representatives, any opportunity to amend them. In this respect the modern initiative is far inferior in principle to the ancient pure democracy, for the latter, theoretically anyhow, possessed the principle of majority rule. Quite apart from the advantage of having received careful scrutiny and the safeguard of having to pass through several committees, a legislative law has this immense superiority over an initiative law:—it is formulated by a majority of the voters of the state in a representative sense;—that is, the committees that recommend it are selected—directly or indirectly—by a majority of the legislature, which practically, in a numerical idea, represent a majority of the voters; then, if a majority of the members of the legislature—who represent the majority of the voters of the state—want to do so they can amend or change the bill to meet their views. But an initiative bill represents the views of nobody but the signers of the petition—a small minority of the total number of voters, and, human nature

being what it is, probably a large proportion of the signers have not got the slightest knowledge of what they signed. It is notorious that men can be easily persuaded to sign petitions for almost anything.

The theory of the referendum must be conceded to be that the people—that is, a majority of the people—shall rule, in the final passage of laws. Yet in its universal application there is recognized the absolute right of a small minority—from 5 to 8 per cent of the total number of voters—to suspend legislative laws duly passed by the representatives of a majority of the people; and in practice it results in another minority finally passing these laws, for the history of the referendum is that only a minority of the electors vote for the proposition.

It is true that some economists contend that "silence gives consent" and that if a majority permit a minority to pass a law, the majority have no right to complain. But the same argument holds good as to the representative system: for undoubtedly most of the political evils of the day arise from the neglect of a large proportion of the people to avail themselves of their civic privileges and obligations. It is to be further remarked, also, that it is an experience seldom with an exception, in Switzerland as in America, that citizens take far greater interest in the election of men than they do in the passage of laws. All observers, native and foreign, are impressed with the apathy of voters to the propositions submitted to them; and it has been demonstrated in Switzerland that compulsory voting is no remedy, as from 20 to 30 per cent of the voters cast blank ballots. What is the remedy? Certainly not giving people more of what they plainly show they do not want.

The initiative and referendum is not only a menace to honest and reform government, but is a false friend to labor. It provides a device through which unscrupulous "special interests" can secure their ends with far greater ease than they can under the representative system, when they have familiarized themselves with its tricks and when the general public have become wearied of the numerous petitions and elections peculiar to the system.

American trade unionists have generally endorsed the initiative and referendum for the reason that they believe that through it they can secure certain reforms they demand. Possibly they might do so;—and probably also, they can in due time by the exercise of patience and intelligent agitation, secure the same reforms through the representative system, should

their demands appeal to the sense of reason and fair-play of the people of the state. But in advocating the initiative and referendum the trade unionists are short-sighted. If they, as an organized minority,—and that they are a decided minority of the total electorate must be conceded—can secure their demands through the initiative and referendum, so, likewise, can other minorities use the scheme for purposes that are altogether selfish. Because Switzerland has the initiative and referendum it is often spoken of as “the most democratic country in the world.” As a matter of fact, however, so far as the wage earners—the “proletariat”—are concerned, the United States, England, Australia, New Zealand, and Canada—all under the representative system—are far more democratic and far more responsive to labor’s demands for reform, than is Switzerland. The reason is that, as explained elsewhere, the majority of the people of Switzerland are naturally conservative and anti-Socialist, they being small peasant proprietors. No labor man or Socialist will dispute the authority of Robert Hunter. In his “Socialists at Work” (1908) he says (speaking of Switzerland):

“The electoral system is open to much fraud, which is unscrupulously practiced by the capitalist parties to keep the workers from representation in the National Council. At the last election the socialists assembled 70,000 votes, by which they claim to have won 25 seats, but they were only allowed six. Recent inquiries have been made into the extent of exploitation of child-labor, with the appalling revelation that 53 per cent of the children attending school are also employed in laborious daily work. The school teachers complain that the mentality is now very low, and that 40 per cent of the children are stunted. Capitalism has become intense, and with it an almost savage system of oppression has been instituted by the government. Switzerland has become notorious for the frequency with which the soldiery is used against the workmen.”

And all this in the model initiative-referendum republic.

An overwhelming objection to the system is that wherever it has been tried it has resulted in minority rule. Even in Switzerland—the most favorable state possible for the system—direct legislation is always by minorities. This is so as to important as well as to comparatively trifling matters. The vote on the prohibition of absinthe—a question of great interest in Switzerland—only reached 370,470, out of a total voting strength of over 800,000.

Professor Qberholtzer says in his book, “The initiative and

referendum in America:" "There is but a fraction equal to about half of all those who know their minds respecting candidates who seem to care anything about measures." At special elections, "it is impossible to get out even half the vote, unless it be a proposition to deprive a citizen of his beer or gin. Even a proposal to enfranchise an entire new half of the race, and to double the electorate, or to ally the state openly with lottery men and gamblers, fails to get a majority."

What is true of Switzerland and the United States is true of Canada. In no country of the world are politics keener than in the Dominion, and public questions are discussed there as a rule with a fervor rare even in the United States. But the Canadians will not go to the polls to vote simply on propositions;—there must be "the human touch" of candidates to bring out the vote.

It is sometimes argued that if the majority fail to vote it is their own fault if the minority carry the day,—and that the majority have no right to complain. It is not a matter of complaining,—it is a matter of adopting a system the universal experience with which is that it elicits the interest of only a minority of the voters. The argument referred to cuts both ways,—it can be used in favor of the representative system with just as much force: for if a majority of the electors took sufficient interest to elect honest and capable men, there would, admittedly be no need of the initiative and referendum;—and if this is not done, then the electors have no right to complain; the remedy is in the people's hands, and if they don't use it it is their own fault. But human nature must be accepted as it is, and the wise statesman tries to utilize it to the best advantage. He certainly, however, will not make it easy for the minority to enforce its will against the majority, even though the majority is to blame, unless such a system is absolutely unavoidable. That is the best system of popular government which appeals to the largest number of the electors in an intelligent manner, not in a mere transitory fashion, but continuously. There is something radically wrong with a system the inevitable and universal tendency of which is to cause a majority of the electors to practically disfranchise themselves. The initiative and referendum as an effective instrument of popular government is opposed to human nature and human experience;—that of itself absolutely condemns it.

Advocates of the initiative and referendum are compelled to recognize the force of the objection that crude measures are

sure to be submitted to the people under their system. It is now suggested that the legislature should have power to amend crude measures adopted by the people under the initiative. This certainly would be desirable should the initiative unfortunately become established in our system of legislation; but it is a confession that direct legislation, while possibly all right as an abstract theory, is impracticable as a system of actual legislation. There is also this serious objection to the suggested compromise: In its very essence direct legislation is a proclamation that the people do not trust the legislature; it is therefore reasonable to assume that legislators would take but little interest in bills submitted to them under the initiative, particularly when they would have to be referred back to the people for adoption; the probable consequence, therefore, would be that the legislators would be inclined to wash their hands of the entire matter, and let the bills pass even with conceded defects. First, there would be general indifference because of lack of direct responsibility; and secondly, the legislators would take rather a cynical pleasure in demonstrating that the people en masse are incapable of legislating properly. While these governing influences are not to be commended, they are quite in line with the influences controlling human nature;—and no legislation or system of government in the world has yet succeeded in killing human nature.

One of the strongest objections is that under the initiative, measures must be accepted or rejected in their entirety. Under the representative system, it is very seldom that a bill is passed in the exact form in which it is introduced,—even though it be drawn up by an experienced legislator. It is scrutinized by a committee in each branch, and then has to be read and debated by the members of both branches. Finally, it has to run the gauntlet of the governor's veto. But under the initiative every measure must be submitted exactly in the form in which it is on the petition. Even though the substance of the bill might be worthy, yet the form of the bill might be defective; or it is quite likely that while part of the bill might be advisable to enact, other portions might be highly objectionable. But the initiative bill must go to the people without a change of a word, and be voted upon with all its original imperfections. "Let the people rule!" To give opportunities for needed amendments is an interference with that divine right!

Honorable James Bryce, the British Ambassador to the United States, has a very interesting chapter in his incompara-

ble work, "The American Commonwealth," on direct legislation. He notes the tendencies of the American people to distrust their legislatures, and "to seize such chances as occurred of making laws for themselves in their own way," and he adds: "Concurrently with the growth of these tendencies there had been a decline in the quality of the state legislature, and of the legislation which they turned out." According to Mr. Bryce, each of these tendencies re-acted upon the other. He proceeds to say:

"What are the practical advantages of this plan of direct legislation by the people? Its demerits are obvious. Besides those I have already stated, it tends to lower the authority and sense of responsibility in the legislature; and it refers matters needing much elucidation by debate to the determination of those who cannot, on account of their numbers, meet together for discussion, and many of whom have never thought about the matter. These considerations will to most Europeans appear decisive against it. The proper course, they will say, is to improve the legislatures. The less you trust them, the worse they will be. They may be ignorant; yet not so ignorant as the masses." (P. 453, 2nd Edition of the American Commonwealth.)

There are two great fallacies underlying the theory of the initiative and referendum:

(1) That a community which, through indifference, incompetency, or corruption, fails to elect honest and capable legislative representatives, will wisely perform the infinitely more complex and delicate function of passing laws directly.

(2) That the necessity for laws being skillfully drawn, carefully scrutinized, and thoroughly debated, considered and formulated, before being presented for passage, can be ignored.

From these fallacies follow the inevitable evils which condemn the system as being unsound and even vicious, both logically and as the results of actual experience.

DIRECT LEGISLATION.

John Z. White. Abstracts from a reprint from the Public, January 8, 1908. (Affirmative).

The referendum and initiative are the means by which self-government is secured by any group of men under any conditions whatsoever. Interference with these is just so much subtracted from the fact of self-government.

If the people of a city, State, or the nation, are in truth to be

self-governing it seems inevitably to follow that they must have at hand the means of making the government do their bidding. The people of the city of Chicago, for instance, voted in favor of public ownership of their street car system, but the board of aldermen were able to thwart the popular desire. The people of Philadelphia, and many other places, have repeatedly found themselves unable to achieve their wish. To many, self-government has for such reason come to be looked upon as an iridescent dream.

This pessimistic view arises from the fact that we are possessed of but part of the necessary machinery of self-government. We are like an engineer who has all essentials save the governor. His engine will "go," but its action is beyond all orderly control.

The initiative and referendum, taken together, are called direct legislation. That is, just as in any deliberative body if the usual machinery does not produce desired results, the body can act directly. So, if our city or other government does not act rightly, the body of the people, when possessed of machinery of direct legislation, can act, or legislate, directly. Without this power they are really not self-governing.

With the initiative and referendum the will of the people cannot be thwarted by indirect methods. In the legislature, "pigeonholing" and obscure amendments frequently divert or even reverse the effect of a law as first introduced. A bill, on being presented to the legislature, is referred to a committee. Unless those interested in its adoption are sufficiently powerful to overcome any opposition that may appear, the bill is never heard of again—it is "pigeonholed."

If forced from the committee, and its enemies cannot out-vote its friends, it may be placed so far down on the list of bills that the day of adjournment arrives before it is acted upon. Failing to stop the bill by these methods, amendments are proposed, and it often happens that a few members are (or profess to be) convinced the amendments are desirable, when in fact they render the whole bill useless.

If a bill finally gets through one house, it must travel the same course in the other. Failure of the two houses to agree often leads to a conference committee from both—with, of course, another opening for clever minds.

After all this the bill may still be vetoed. Later still it must run the gauntlet of the courts.

All of these methods of obstruction are avoided by the ini-

tiative and referendum. A bill properly signed and filed goes to the people without obstruction. The people adopt or reject. All opportunity to deceive or poison is eliminated.

Direct legislation is merely the application to our public affairs of these methods that experience has shown best suited to attain the end desired. That end is self-government. Do we want self-government? It sometimes seems problematical. Capable men who oppose direct legislation can explain their attitude only on the ground that the people, in their judgment, are not capable of managing their own affairs. Such men are tories. They have no proper place in the American scheme of government.

If it be held that we have in fact conducted this government for above a century without direct legislation and that we may safely continue "in the path our fathers trod," we would call attention to the fact that in nothing else are we satisfied with the ways of our fathers. They used the ox cart—we do not. Just as we have improved on our fathers' mechanical appliances, without violence to the principles of mechanics, so it may be possible to improve on governmental machinery without in any way altering the correct principles of government which we inherit.

The principle of the first locomotive is identical with that of the last. The changes have all been in the elimination of defective methods in detail, to the end that the essential principle involved might be more fully realized. Why is it not the part of wisdom to eliminate like defective details in the machinery of our government?

Again, when we remember that for the first time in history self-government on a large scale was attempted in America is it at all surprising that the machinery first installed is defective in detail? Would it not be profoundly astonishing if that machinery were not defective?

REPRESENTATIVE GOVERNMENT AS AGAINST DIRECT GOVERNMENT.

Samuel W. McCall. Abstracts from Address (Negative).

In our legislation the work of investigation and of perfecting details is of such great difficulty that proposed laws are distributed among the various committees, which are charged with the duty of considering their exact terms. The legislative body as a whole, although its members are paid for doing the work, can not safely assume to pass upon the intricate questions of legislation without investigation by committees selected with

reference to their fitness for the task. The proposed law as perfected by a committee is brought before the representative assembly and it is there again discussed and subjected to criticism, both as to policy and form, and in this open discussion defects often appear which require amendment and sometimes the defeat of the bill. And even with these safeguards, laws often find their way upon the statute books which are not best adapted to secure the purposes even of their authors.

But what would be the procedure under the initiative? In Oregon a law may be initiated upon a petition of 8 per cent of the voters, and it then goes to the people upon the question of its final enactment without the intervention of any legislature. Some man has a beautiful general idea for the advancement of mankind, but beautiful general ideas are exceedingly difficult to put into statutory form so that they may become the rule of conduct for a multitude of men. Another man may have a selfish scheme which, like most selfish schemes, may be concealed under specious words. The beautiful idea or the selfish scheme is written by its author in the form of law, and he proceeds to get the requisite number of signers to a petition. With a due amount of energy and the payment of canvassers, these signatures can be secured by the carload, and the proposed law then goes to the people for enactment, and the great mass of us, upon the farm, on the hillside, and in the city, proceed to take the last step in making a law which nine out of ten of us have never read. And this is called popular rights and giving the people a larger share in their government!

Of course one must be cautious about expressing a doubt that the people in their collective capacity can accomplish impossibilities. You may say of an individual that he should have some special preparation before he attempts to set a broken arm or perform a delicate operation upon the eye. But if you say that of all of us in a lump, some popular tribune will denounce you. And yet there is ground for the heretical suspicion, admitting that each one of the people may have in him the making of a great legislator, that there should be one simple prerequisite which he should observe in order to be any sort of a legislator at all. He should first read or attempt to understand the provisions of a bill before solemnly enacting it into law. One can scarcely be accused of begging the question to say that the voters would not read a whole volume of laws be-

fore voting upon them. The slightest knowledge of human nature would warrant that assertion.

How many even of the most intelligent of our people, of college professors or ministers, read the statutes that have already been passed and are to govern their conduct? Even lawyers are not apt to read them generally, but in connection with particular cases. But if some proof were necessary, one has only to cite some of the Oregon laws. For example, there are two methods of pursuing the salmon fisheries in the Columbia River. In the lower and sluggish waters of the stream fishing is done by the net, and in the upper waters by the wheel. The net fishermen desired to prohibit fishing by the wheel, and they procured sufficient signatures and initiated a law having that object in view. On the other hand, the wheel fishermen at the same time wished to restrict fishing by net, and they initiated a law for that purpose. Both laws went before the people at the same election and they generously passed them both, and thus, so far as the action of the people was concerned, the great salmon fisheries of the Columbia were practically stopped.

The referendum may sometimes profitably be used in connection with questions affecting municipalities, where each voter has an appreciable interest in the solution of the question and is familiar with the conditions upon which the solution depends; but as a step in the process of passing statutes of the usual character, statutes which create crimes and provide penalties for their violation, or which have complicated regulations of a business character, the use of the referendum would be vicious. We are not in the mass adapted to pass upon questions of detail, just as the thousands of stockholders of a great corporation are not in a position directly to manage its business affairs. The function that we can best exercise is that of selecting agents for that purpose and of holding them responsible for results. Upon the questions relating to the character of representatives, who are usually known personally to the people, they have excellent means for forming a judgment. But if they so often make a mistake in their judgments of the men they select, as we must infer from the arguments in favor of direct legislation, how much more would they be apt to make mistakes in dealing with the complicated questions involved in practical legislation.

We are so engrossed in our private business that many of us give no attention to public questions, or we too frequently

bestow upon the latter such superficial study that our action becomes the dangerous thing that is based upon little knowledge. This condition of indifference, even under our present system, produces nothing but an evil effect upon our laws; and this evil effect would be greatly intensified under the initiative and referendum. Legislation may be expected to represent in the long run the fair average of the information and the study of the body which enacts it, whether that body be composed of four hundred legislators or one hundred millions of people.

A reform that is most needed is one that will make difficult the passage of laws, unless they repeal existing statutes. The mania of the time is too much legislation and the tendency to regulate everybody and everything by artificial enactments. The referendum would not be likely to furnish the cure for this evil, but would tend to increase the number of questionable statutes that would be referred to the people; and some of them would doubtless be enacted. If those who are chosen and paid to do the work, and upon whom the responsibility is placed, are sometimes found to enact vicious laws, what would be the result if legislation were enacted by all of us when we had made no special investigation of details, when we should be quite too prone to accept the declamatory recommendations of the advocates of legislative schemes, and submissively swallow the quack nostrums that might be offered for the diseases afflicting the body politic?

The most dangerous statutes are those which deal with admitted evils, and, in order to repress them, are so broadly drawn as to include great numbers of cases which should not fairly come within their scope, or to create a borderland of doubt where the great mass of us may not clearly know how to regulate our conduct in order that we may comply with their prohibitions. Just such statutes, with a basis of justice but with imperfectly constructed details, would be the most likely to prevail upon a popular vote. If the forty-six states of the union and the National Government which is the aggregate of them all should have this system of direct legislation, our statute books would very soon become a medley of ill-considered reforms, of aspirations sought to be expressed in the cold prose of statutes, of emotional enactments perpetuating some passing popular whim and making it a rule of conduct for the future; and the strict enforcement of our laws would mean the destruction of our civilization.

It is not difficult to turn back to the supreme crises in Amer-

ican history when its greatest figures were heroically struggling for what they saw to be for the interests of their country, and, how the whole course of history might have been changed, and how ambition and envy might have utilized a temporary unpopularity to terminate some splendid career if the policy of the recall had been in force.

As an illustration, take Lincoln in the earlier days of his administration. The disastrous defeats that the Union had suffered had been relieved only by slight successes. Lincoln scarcely had a friend even in his own cabinet. Seward was willing to take him under guardianship and run the country for him, Stanton had written of the "imbecility" of the administration; Chase was ready to be a candidate for the presidency himself; the abolitionists were unsparing in their criticism; the great organs of public opinion were hostile to him; and there can be little doubt that, if a proceeding for recall could have been had against him at the moment when he was enveloped in the clouds of unpopularity, the career of the greatest of Americans would have been brought to a disgraceful ending, with results to civilization which it is melancholy to contemplate.

Those who advocate the direct action of our great democracy might study with a good deal of profit the history of the democracy of Athens. No more brilliant people ever existed than the Athenian people. They had a "genius" for government. The common man was able to "think imperially." We marvel when we consider the surviving proofs of their civilization. But when they did away with all restraints upon their direct action in the making and enforcement of laws, in administering justice, and in regulating foreign affairs, their greatness was soon brought to an end and they became the victims of the most odious tyranny to which any people can be subjected, the tyranny that results from their own unrestrained and unbridled action.

DIRECT LEGISLATION.

Frank Parsons. *The City for the People.* pp. 303-370. Abstracts (Affirmative).

The referendum is the key to progress. It will open the door to all other reforms. It is not the people who defeat reform. The people want honest government, civil service reform, and just taxation. They vote overwhelmingly against monopoly rule and for public ownership of street franchises and public utilities almost every time they have the opportunity. It is the power of money and corporate influence and official interest that checkmate progress. Miles of petitions have gone into

Congress for a postal telegraph. By the million our people have expressed the wish for such an institution, and Hon. John Wanamaker says in his very able argument on the subject, that the Western Union is the only visible opponent of the movement. It is enough, however, for it has more weight with Congress where its interests are touched than all the 75 millions of "common" people in the country. But if the common people made the law, the Western Union would weigh several tons less, and the nation would own the telegraph in a very short time.

Hundreds of instances might be named in which councils, legislatures, and congresses have persistently defeated the well known will of the people. It is not sufficient now to educate the people to a new idea, or even to elect representatives on promise to carry it into execution; you have also to fight the power of money and corruption in the legislature that will steal away or put to sleep the ardor of your legislators.

How important it is that progress should rest with the people free of hindrance from their rulers is clearly brought out in this fine passage from the great historian, Buckle:

"No great political improvement, no great reform, either legislative or executive, has ever been originated in any country by its rulers. The first suggestors of such steps have invariably been bold and able thinkers, who discern the abuse and denounce it and point out how it is to be remedied. But long after this is done, even the most enlightened governments continue to uphold the abuse and reject the remedy."

Wendell Phillips says: "No reform, moral or intellectual, ever came from the upper classes of society. Each and all came from the protest of the martyr and the victim. The emancipation of the working people must be achieved by the working people themselves."

Direct legislation will tend to the purification of politics and the elevation of government. It is not the people who put up jobs on themselves, but corrupt influences in our legislative bodies; the referendum will kill the corrupt lobby and close the doors against fraudulent legislation. It will no longer pay to buy a franchise from the aldermen, because the aldermen cannot settle the matter; the people have the final decision, and they are so many that it might cost more to buy their votes for the franchise than the privilege is worth. It is comparatively easy for a wealthy briber to put his bids high enough to overcome the conscience or other resistance of a dozen councilmen. It

is quite a different matter to overcome the consciences or other resistance of a thousand or a hundred thousand citizens. Legislative bribery derives its power from concentration of temptation resulting from the power of a few legislators to take final action.

Demagoguery and the influence of employers over the votes of their employees will be diminished factors in elections. When the question is voting an office to A or to B, one as good as the other for all the voter knows, a two-dollar bill or the wish of his employer may seem to the voter to be worth more than the problematical difference between the two candidates, for whatever their platforms and promises there is little possibility of telling what they will do when elected. But when the question comes directly home to the self-interest of the voter, on a bill to give away public property or franchises, or make an extravagant contract, etc., the voter will use the protection of the secret ballot and record his opinion, regardless of two-dollar bills or the wishes of employers.

The power of rings and bosses will be greatly reduced by the referendum; indirectly so far as concerns their administrative power; directly so far as concerns the large portion of their power, which depends on controlling legislation. Nothing will do more than the referendum for the cause of civil service reform and the awakening of a strong interest in politics and the ballot on the part of the best people, and these things will quickly abolish the boss and ring.

Partisanship will sink into comparative insignificance in the government of the country. At present about all the guide the average voter has is the party to which he belongs. He knows little or nothing of the candidates on either side. There are only a few things much talked of in the campaign, so far as his party papers and speakers bring him information, and he thinks his party is right on these things, or he votes with it because his father did or his employer, and because there is no particular reason appealing to his interests to prevent him from doing so. But when specific measures are submitted separately to the people in the precise form in which they are to take effect, voting will assume a definiteness heretofore unknown, and the citizens will vote on each measure as they believe their interests require, and will not be likely to rob themselves or disregard what they believe to be for their own benefit, merely to please a party machine. Not only will the interest of the voter lead him away from partisanship, but the outside pres-

sure tending to make him a partisan will be much less, since the larger part of the motives for that pressure—the legislative and administrative spoils to be gained by party success—will disappear, the first as a direct consequence of the referendum, the second as an indirect consequence through the favored growth of civil service reform.

The referendum will simplify as well as purify elections. It is much easier to vote upon measures than men. A man is a cyclopedia of measures bound in mystery; even his character is a puzzle, for the main business of opposing politicians is to fling mud at each other's candidates until it is impossible to tell how much is mud and how much is man, or some other animal. Instead of a tangled mass of ignorance and vituperation, the referendum will bring to the voters a series of clear-cut measures, each to be decided on its own merits. Shall we have proportional representation? Shall women vote on the same terms as men? Shall street car companies be required to put effective fenders and vestibules on the trolley cars? These are questions easily understood and capable of decision without the perplexing admixture of personal considerations or inquiries as to whether a candidate for office did not behave with becoming modesty in early life, or loves liquor too well, or whether the tariff ought to be higher, or silver freer, or whether hard times or the good ones came in under republican or democratic administrations.

The referendum will simplify and dignify the law. A law that is to be submitted to the people with any great hopes of its adoption must be reduced to its lowest terms, and we shall stand a chance of avoiding in future the piling up of massive tomes of useless enactments which the legislature itself knows little or nothing about a month or two after their passage, even if understood at the time, and which become law to buttress some private interest or to fill up the time of our legislators, who, elected to make the state's laws, seem to measure the fulfillment of their duty by the number of bills they enact.

There would be more justice and less litigation by far, if the courts were left free to apply broad principles instead of being compelled to give attention to the rigid language of narrow-minded, short-sighted legislators, and if men were able to carry the law in their consciences instead of requiring a two-horse team to convey it and a line of lawyers and judges from the justice court to explain it to them, and then be in danger that they'll turn around the next day and declare it is the other

way. It is one of the most ridiculous things in modern civilization that every man is presumed to know the law, while everybody knows that nobody knows it, not even the judges of the supreme court.

The elevation of the press is one of the effects of the referendum, and one which alone is sufficient to make it an incalculable boon. One of the most noticeable and important of all the many changes produced in Switzerland by the adoption of direct legislation, is the substitution of fair debate for noisy vituperation in the columns of the daily papers. It will do a similar work in America, and the Lord knows that we sorely need such a change. As measures are put in the place of men, sober discussion will take the place of the traffic in abuse. The tendency to manufacture facts, and deluge the country with sophistries will not so readily yield, but even in this respect there is sure to be a great improvement. When the people come to direct their own affairs they will demand the truth; they will want the actual facts, so that they may judge correctly in respect to their business, just as a board of directors of a private corporation wants the facts, and regards deception of themselves as one of the most unpardonable sins.

Direct legislation will have a profound educational effect. Wendell Phillips said long ago that the discussions accompanying the presidential elections give the people a tremendous intellectual lift every four years. With the referendum, the progress will be continuous, instead of spasmodic, with intervals wide enough for the pupils to forget nearly all that they learn at each lesson, as at present.

Nowhere on the face of the globe do you find as high an average of keen intelligence as among the men of a New England town trained from boyhood in the town-meeting. Continual voting on measures supplies an invaluable discipline in place of the retrograde influences often involved in personal elections. Every citizen's sphere of thought and responsibility will be enlarged by the referendum, and growth will be the result. Besides being a University in itself, the referendum will make the public welfare depend so directly and obviously on the morality and intelligence of the people, and not on the sagacity and probity of a few individuals, that patriots, statesmen, and business men will combine to develop to the utmost every means of educating the masses, and a great impetus will

be given to popular education, with a corresponding improvement in the results.

The emotional development of the people, as well as their intellectual growth will follow from the referendum. The consciousness of added power and responsibility will give the voters a new dignity and a nobler manhood. They will feel like judges in the court of final appeal. Not mere selectors of somebody to boss them, but rulers themselves. Such changes in spiritual attitude and environment always work most powerfully upon the moral and emotional development of the individual and the race. The patriotic, law-abiding, law-enforcing sentiments of the people will be specially intensified by the referendum, because they will know that the country is theirs not merely in name, but in fact.

The referendum favors stability by developing patriotism and education, securing greater simplicity and better enforcement of law, driving bad men out of politics and bringing good men in, supplying a safety valve for popular discontent, and requiring a more careful consideration of legislation. Long use of the referendum has shown that it is conservative. This clearly appears from facts already stated concerning its use in this country, and its record in Switzerland for thirty years shows that two-thirds of the measures submitted to the people were rejected by them.

Large economies will result from direct legislation through the stopping of jobs, extravagant contracts, corrupt legislation of all sorts, cutting down the power of bosses and rings, simplifying the law, reducing litigation and diminishing the expenses of even the legitimate government. When the people really make the laws, they will arrange things for their interests. They will banish unnecessary offices, reduce the salaries of lofty officials, abolish jobbery and extravagance, get rid of the iniquitous spoils system, cut down the power of corporate wealth, rescind all forfeited franchises and take control of misbehaving monopolies. Economy, justice, and purity will go hand in hand. The cost of taking the referendum vote will be very slight: not a half of the saving on the one item of printing the laws; not a tenth of the value of many a franchise it will keep from being stolen.

The referendum will give labor its true weight. Labor's interest in the referendum is measureless; it is *par excellence* the workingman's issue. The present delegate system places labor at a tremendous disadvantage as compared with capital. Near-

ly all the delegates are wealthy or sympathize with the wealthy, or are under their influence. Labor cannot expect a great deal from legislators; and the weapon it has largely relied upon, the organized strike, is being abolished by injunction. Not without reason, for it is certainly against the public interest to allow a big corporation and its employees to settle their disagreements by private war in the heart of a great city, to the vast disturbance of business and perhaps the destruction of life and property—just as much against the public interest as it would be to allow two individuals to settle a dispute by conflict in the public streets. Nevertheless, labor is coming to be in a very tight place without the strike and without effective representation in the halls of legislation. What is the remedy? Courts of compulsory arbitration would do some good, but the fundamental constitutional cure is direct legislation.

Not the producing classes alone, but every other class in the community will be benefited by the referendum. It must be clear by this time that all who wish justice and good government will be benefited by direct legislation, and it is equally true that even the bosses and tricksters will receive a priceless boon by the removal of the temptations that help to make them evil men, and the establishment of conditions tending to lift them to a nobler plane of life.

Experience speaks strongly for the referendum, not only from its successful use in the United States, but also from its use in England and Canada and most eloquently of all from the splendid results of its complete adoption in Switzerland. In Canada the referendum is often used to ascertain public opinion on important measures, and has done some excellent work in the same way as in our cities and states when used voluntarily by the legislatures or councils.

In England the referendum principle is very effectively applied. Every "appeal to the people" after each dissolution of parliament is practically a referendum. Parties go to the people, not with vague generalities muddled in a heap of promises which the promisors never dream any one would be so discourteous as to ask them to fulfill, but with a distinct course of legislation clearly marked out, a definite and practical measure reduced to the very terms it is proposed to enact into law, an actual bill which the people sit in judgment upon, hear the advocates for and against and reject or approve as they set fit.

It is to Switzerland, however, that we must turn for the fullest development of the referendum. Fifty years ago Switzer-

land was more under the heels of class rule than we are today; political turmoil, rioting, civil war, monopoly, aristocracy and oppression—that was the history of a large portion of the Swiss until within a few decades. Today the country is the freest and most peaceful in the world. What has wrought the change? Simply union and referendum—union for strength, the referendum for justice. Union to stop war and riot—the referendum to overcome monopoly, aristocracy and oppression.

The final and fundamental political argument for the direct legislation is that it is necessary to true self-government. It is the only way to establish public ownership of the government. It is the only way to prove and overcome misrepresentation with due precision and promptness. It is the only practicable means of destroying the great lawmaking monopoly which holds us in its grip today, and which is not only a terrible evil in itself, but the prolific parent and protector of other monopolies and oppressions.

THE ABNORMAL IN LAW MAKING.

Francis B. James. Abstracts from Address. (Negative).

Legislation is merely adding legal sanctions to the principles of sociology. When those charged with power to make laws select a sanction reasonably adequate to enforce such a principle and when such principle has been ascertained by inductions neither too broad nor too narrow including human nature and sound ethics such legislation is normal. When, however, the principle is ascertained without thoughtful research and is impractical in its application, then such legislation is abnormal. This can be illustrated by the Blue Laws of the colonial days; the Alien and Sedition laws of Adams' administration; the Silver Purchase Act; some provisions of the Contract Labor Law, and various features of the Anti-Trust law. The movement in favor of the initiative and referendum is another example of the abnormal in law making.

From time immemorial laws have been made either directly by the sovereign or indirectly by a representative deliberative body. Law making is direct legislation whether the sovereign is an absolute monarch or whether the sovereign is a body of people. In Russia until the last few years laws were made directly by the Czar without the intervention of a deliberative body. It has been a fundamental principle of the Anglo-Saxon race "from the time whereof the memory of man runneth not to the contrary" to have laws framed by a representative 'de-

liberative body. The Magna Charta signed by King John, June 15, 1215, guaranteed that the people should "have the common council of the Kingdom," which afterwards came to be known in the reign of Henry III as "the Parliament." The principle of a representative deliberative body to frame laws received the sanction of the Petition of Right in 1628 and the Bill of Rights in 1689. The Declaration of Independence complained against King George for "suspending our own legislature and declaring themselves vested with power to legislate for us in all cases whatsoever." The Revolution successfully contended against the power of the British Sovereign to legislate directly for the people of America and in favor of indirect legislation by a representative legislative body. The query is not whether one is for or against the initiative and referendum but whether he is for or against legislation by the initiative and referendum. There are governmental affairs in which the referendum is proper, but not as a method of law making. Law making by the initiative and referendum is the most dangerous innovation ever presented to the American people. The constitution of a state is a social compact binding the citizens together into a political unit and therefore is a proper subject for a popular vote. The constitution, however, merely defines the departments of government and imposes limitations on the exercises of the power of each, and is more or less permanent in its nature. The referendum is also proper in giving or withholding support to administrative acts vitally and irrevocably affecting for an extended period of time all the members of a local community.

Law making includes the science of ethical compromise. Laws merely reflect social and economic conditions. On these there is always a marked difference of opinion. When these differences are irreconcilable and stubbornly divide a community, it brings unrest and an evasion of law by one-half of the community and creates a distrust of all laws. When a community is sharply divided on its economic and social views, there should be some method of arbitrating differences on a fair basis. A deliberative body is the best ever created for that purpose. Debate, discussion, and criticism tend to modify the views of each arbitrator and bring about legislation which is not too radical to either side; such a body is not compelled to accept or reject a single proposition, but may consider alternative propositions and take the best from all. When these conflicts between inconsistent views pass through a single deliberative body it has been found that such a body is frequently too

responsive to popular impulse, prejudice, and passion. The Anglo-Saxon race wisely devised a second deliberative body with a veto power in an executive as a check on hasty action. Under this system of representative government with proper constitutional limitations on the exercise of its powers, America has grown great commercially, politically, morally, and socially. It is now proposed to substitute in place of this deliberative body direct legislation by the direct vote of the people. In other words, that a small class of people may project a proposed law which the people must accept or reject without change, with no alternative between one measure and another, upon the same subject, and if criticism shows a measure is badly drawn or defective, it must be accepted or rejected as an entirety without change. The cry has been raised that if the representatives cannot trust the people, the people cannot trust their representatives. In this statement is involved a fatal fallacy. The people are more accustomed to study human nature than they are to study the details of a human measure. Government by the people does not mean that each citizen must perform each function of government. In the affairs of life there must be a division of labor. Representative government is merely a recognition of this economic principle. This palpable fallacy has been aimed at the executive and next will be aimed at the judiciary. Each citizen cannot perform all the functions of government. Suppose, for example, there was a pipe to be laid on the streets of some city or an engine to be run in the water works. No sane person would trust all of the people to lay the pipe or run the engine; there must be division of labor and the most skilled selected to perform these duties. It has not been many years since Coxey's Army marched into Washington and claimed that the land about the Capitol belonged to all the people and each member of Coxey's Army had a right to step on the grass. To have encouraged this vandalic principle would be destructive of all government. It would give the right to any citizen or all citizens to take seats upon the bench of the Supreme Court of the United States, while in session; to enter upon the most secret conferences at the White House; to interrupt the sessions of the legislative body and occupy the seats of the members. We can trust all the people and all the people can trust their representatives. We cannot trust all the people to perform all the functions of government. A division of labor is necessary.

ANSWERS TO OBJECTIONS TO THE INITIATIVE AND REFERENDUM.

Supplemental Memorial of Initiative and Referendum League of America Relative to National Initiative and Referendum. By George H. Shibley and Robert L. Owen. pp. 10-15.

Objections to the Initiative and Referendum come from three sources: From those who are not informed, from the misinformed, and from the ruling few and their agents.

The ruling few throw dust, endeavoring to confuse the issue, for they cannot win in a straight-out debate, as is evidenced by the results wherever the issue is thoroughly threshed out. In Maine, for example, the vote submitting the constitutional amendment was unanimous. In Pennsylvania the last house by a unanimous vote passed a bill for the initiative and referendum in cities and boroughs. It is clear, then, that the initiative and referendum wins in a straight-out debate. It is only by fallacies that our opponents can make a show. All the facts are against them. This is shown by an examination of their objections. Following are the ones most frequently urged against the establishment of the initiative and referendum in combination with a legislature or Congress.

Objection 1. It would destroy representative government.

Answer: The exact opposite would occur. Representative government will be restored, as is evidenced by actual results wherever the initiative and referendum are established. In Oregon, for example, the establishment of a veto power in voters and the power of direct legislation are being used to establish proportional representation. Proportional representation will be real representative government—the people's interests will be fully represented. The opening wedge for the establishment of proportional representation is the initiative and referendum principle in combination with legislatures and with Congress.

Today machine rule exists, and machine rule is not representative government, as you all know. Representative government used to exist in this country, for the voters possessed an option to instruct their elected representatives. But the convention system arose, and the voters ceased to exercise the right to instruct the elected representatives. Thus the final power became lodged in the party machine, and then the convention system was debased, and we had the detestable rule of the few. This system has been terminated in Oregon and in several other States by the establishment of a veto power in the voters—the power of direct legislation. The legislature is used, but it is

not the final power; the final power is in the voters, where it belongs. The initiative and referendum, then, restores representative government. It does not destroy representative government. It destroys machine rule.

Objection 2. The government erected by the fathers should be maintained.

Answer: The existing system of government has not existed since 1787, but only for about seventy-five years. To refuse to note the distinction between the existing machine rule and preceding people's rule is a gross fallacy. It is an attempt to deceive the public.

Objection 3. The Federal Constitution declares, "The United States shall guarantee to every state in the Union a republican form of government." The installation of the initiative and referendum in connection with the legislature would make an un-republican form of government.

Answer: That is queer logic: to restore the people's rule would be un-republican. Not so; what the United States Government guarantees is protection against a monarchical form of government and an aristocratic form of government. It was so stated in 1787 by the advocates of the proposed Constitution. (Letter 43, the Federalist). Furthermore, the meaning is shown by referring to the State governments existing in 1787, which admittedly were republican. In them the voters balloted direct on public questions whenever they chose to do so and the will of the majority was an instruction to legislative representatives, who obeyed. The initiative and referendum is in principle the same as instructions to elected representatives.

Objection 4. The existence of the referendum will lower the representative's sense of responsibility.

Answer: By that is meant that the representative will no longer be a ruler, but the people's agent. That is as it should be.

Objection 5. To establish the direct voting by the people on public questions will terminate the equal power of the States in the Senate.

Answer: No, for it is to be provided that before a measure shall carry it must receive a majority of the States, as well as in a majority of the Congressional districts. This double majority is provided for in Switzerland, and it is a noticeable fact that each measure that has received the approval of a majority of

the voters has also received their approval in the majority of the Cantons or States.

Objection 6. In the States where there are large cities the farmers should oppose the establishment of the initiative and referendum because if the system should be installed the farmers would be in the minority.

Answer: As it now stands the farmers and people in the cities are both ruled by the monopolists, through the machine-rule system. The farmers should help restore the people's rule, for it will help themselves as well as help their fellow-men in the cities.

It seems strange to hear it said in this country that the farmers should advocate the rule of the few, and those few the trust kings. The farmers are "skinned" by the trusts and other machine-rule contrivances the same as are the people in the towns. Both are vitally interested in terminating machine-rule, with its corruption, special privileges, child labor, and other evils.

Objection 7. Too few people vote questions, as is evidenced by the extremely small vote on constitutional amendments.

Answer: Those who have not voted on the public questions are the ones who have not studied them. They have been careless and ignorant. The ones, then, who have decided the referendum questions are the ones who have taken an interest in public questions. In other words, there has been a self-disfranchisement of the unfit. This is as it should be.

Furthermore, under the present system of compulsory referendum for constitutional amendments there usually is not a proper advertising of the proposed changes, and frequently the referendum ballot gives only a general description of the question at issue, and sometimes the question is unimportant. The small vote under these circumstances is no argument against the optional referendum. Our opponent's claim is a fallacy. But as he has no case, he is obliged to argue fallaciously or admit that he is defeated.

Objection 8. The people are not capable of deciding intricate questions.

Answer: Under the initiative and referendum the only power the people as a whole have is a veto power. They merely can reject measures, which compel the legislative representatives or would-be reformers to present a revised measure or acquiesce for a time. Should 5 per cent of the voters order that

a tariff bill enacted by Congress be referred to the people and should the bill be rejected, it would merely send it back to Congress with orders to pass something better or take the consequences. Undoubtedly Congress would pass another bill and it would be nearer the people's ideal.

Now as to results. Experience demonstrates that where the people of the United States have ruled it has promoted the public welfare. We appeal to the first sixty-five years of our country's history and to present-day results wherever our people are in power. Not one failure is cited by our opponents; therefore they have no basis for their objections.

Objection 9. The opportunity to retire a representative who fails to be truly representative is all that the people wish and need to enforce their will.

Answer: This is one way of saying that the existing system of machine rule is satisfactory to the people. Why, then, are the people "kicking?" Why are they arguing for the control of the trusts? Evidently the people's interests have not been cared for and they know that they can care for them—they can establish a direct vote system for public questions. It will result in an immediate control of the trusts and eventually result in the restoration of representative government. Under the existing government it is not possible for the people to elect a really representative Congress. Machine rule exists. The voters are not the ruling power.

Objection 11. The people's rule would result in radical legislation.

Answer: When the people regain their sovereignty they undoubtedly will terminate special privileges, but in going about it through the initiative system they will proceed more slowly than would a really radical Congress. To move the mass of voters is more difficult than to get a majority vote in Congress.

Objection 12. The people are too easily swayed. They are too changeable. They are liable to become an unreasoning mob.

Answer: A distinction is to be made between the ancient small democracies and present-day democracies. In the Greek democracies all the voters congregated at a single meeting place and were unhampered by constitutional limitations provided by a much larger body of voters. Today all is changed. The United States of America is not peopled by the mercurial Greeks of 2,500 years ago, but principally by the descendants of a different nation, descendants of the Teutons, Gauls, and Celts,

who possess a spirit of liberty and an enlightened intelligence and moral fiber which make them more capable of self-government than are even the present day Greeks and Romans; and, instead of the possibility of changing the fundamental law after a few hours' debate, led by two or three popular orators, there is provision for public hearings, for taking of testimony and cross-examination of witnesses, followed by written debate by committees of experts; and the printed debate, together with the copy of the bill, is to be mailed to each voter, and then at election time, months and months after the issue shall have been raised, it is to be decided by the intelligence of the country. The Oregon system has resulted in enlightened majority rule; and the same is true of Switzerland. The modern democratic state, instead of being changeable, is the most stable in the world.

Objection 13. The people will make mistakes.

Answer: This is another theory. No specific instances of mistakes through the use of the initiative and referendum are given. The initiative and referendum system is such that the people understand the questions at issue and are conservative. They prefer to stick to existing conditions until they clearly see that the proposed change will be beneficial. If mistakes were being made the laws would be repealed. This nonrepeal of measures adopted through the initiative and referendum is conclusive proof that the people have not made mistakes. They have advanced slowly, but surely.

Objection 14. Laws would be poorly drawn.

Answer: That again is a mere theory. Experience has proved otherwise. Bills are drafted by those who wish the bills to succeed, and not by corporation lawyers who aim to defeat them. Each measure is clear and unequivocal, for there is no attempt to insert something which the Supreme Court can use as a basis to declare the law unconstitutional.

Objection 15. Should a small per cent of the voters be empowered to bring to a vote of the people such questions as they may wish to propose it would keep the country in a turmoil.

Answer: At first there would be quite a few bills and proposed amendments, for the few have ruled for nearly seventy-five years and are in power. But after a time Congress will represent the people and few if any initiative measures will be voted upon. For example, in Switzerland, where the initiative was installed in federal affairs in 1891 three initiative measures were soon voted upon, one in 1893 and two the next year, since

which time very few measures have been presented, not one being presented for the next thirteen years.

Objection 16. The majority should not be permitted to amend the constitution, for the minority would no longer be protected.

Answer: The question is, Shall the majority or the minority rule? The answer is clearly demonstrated in our country's history. The people have prospered most under majority rule. In Jefferson's day the people's rule resulted in the termination of legal privileges, and today the restoration of the people's rule will likewise terminate legal privileges. In Michigan, for example, the votes of eleven Senators can prevent the submission of a constitutional amendment. Is that right? Or should the people rule?

The monopolists who really believe that they will be better off under a continuation of the existing rule of the few are mistaken. They fail to grasp the fact that the reestablishment of the people's rule in this country will tremendously benefit every one, just as the improvements in electrical appliances are benefiting everyone. The people's rule will improve the social conditions, and everyone will share therein. The monopolists especially will be benefited, for they have accumulated fortunes, and what they most need is a stable government. This they cannot hope for under the continued rule of the few.

ADDITIONAL POINTS FOR THE AFFIRMATIVE.

No private business could long exist with absolute power of attorney to its agents and clerks for two to six years without right to instruct or recall, only to petition, as is the case with public servants. No opponent of the initiative and referendum and recall would consent to operate his own business on the "go as you please" representative plan now in vogue in affairs of state.

Citizens vote for measures instead of men, thereby calling forth the highest intelligence and contributing to educational upbuilding of the whole people.

It will remove the power and possibility of political corruption, discharge the political boss, smash the "machine," destroy the lobby and put an end to all political chicanery and intrigue.

The necessity for large and expensive representative bodies is removed for the people can represent themselves.

The necessity for the veto power of the executive is removed, for the power of veto resides in the people, where it belongs.

The necessity for constitutional restrictions is removed, for the will of the people becomes the constitution of the state.

Simplification of the legislative machinery will lead to simplicity of legal enactment and do away with voluminous, complicated codes of law and uncertain and expensive courts of justice.

It is admitted that mere opinion is not any safer a guide in legislation by the people than in legislation by a king or a congress. Those who legislate must have complete, authoritative statements of facts and arguments on both sides. Without an instrumentality which can furnish this the Initiative and Referendum can never be a success and is certain to disappoint its advocates.

But in the Public Discussion and Debate Department of University Extension we have just such an agency. While this department ministers to the debater it may also serve the voter for both need exactly the same kind of information. The ideals governing the university are scholarship, thoroughness, accuracy. It can only win approval by living up to this ideal; its only interest is to bring about thorough, fair discussion, and any failure to do so would be immediately exposed. It is as secure from personal, partisan, selfish interests or ideals as anything human can be.

The state has already brought together such aggregations of books, magazines, experts, and means of investigation as are possible no where else. All this is necessary to its function of free investigation of truth, and the dissemination of higher learning. All this can easily be made available to the entire state. The exhaustive investigation of subjects is a commonplace of university life. The debate collections now issued by the University Extension in every state are but a special application of an everyday activity in the pursuit of all high learning.

If there were a good debating club in every school house where public questions were discussed with the aid of such collections of materials as are now furnished by university extension, the Initiative and Referendum would have not only a chance to succeed, but there would be thousands of voters better informed than legislators usually are, or have any opportunity to be. University Extension is indispensable to the Initiative and Referendum.

BRIEF REASONS FOR THE INITIATIVE AND REFERENDUM.

Frank Parsons. Abstracts from Direct Legislation—from The City for the People. pp. 363-370. (Affirmative).

It will establish self-government in place of government by councils and legislatures; democracy in place of elective aristocracy; government by and for the people in place of government by and for the politicians and the corporate interests whose instruments they are.

It and it only can and will destroy the private monopoly of legislative power, and establish public ownership of the government. The fundamental questions are, "Shall the people rule or be ruled? Shall they own the government or be owned by it? Shall they control legislation or merely select persons to control it?" The referendum answers these questions in favor of the people.

It will perfect the representative system, correcting the evils of the unguarded method of making laws by final vote of a body of delegates beyond the reach of any immediate effective control by the people.

It will give the representatives a keener regard for public opinion, and enable the people to pass on their action before it takes effect.

It will constitute "a curb to the never ending audacity of elected persons."

It will remove the concentration of temptation by diffusing power; it will no longer pay to spend much time and money bringing strong pressure to bear on a few legislators, because their action will not be final—they can not deliver the goods.

It will eliminate legislative corruption, kill the lobby, stop blackmailing bills, discourage log-rolling, check the passage of private and local acts, and close the door to franchise steals and all other sorts of fraudulent legislation.

It will destroy the power of legislators to legislate for personal ends.

It will infinitely dilute the power of bribery.

It will abolish the obstructive power of unscrupulous minorities in legislative bodies.

It will undermine the power of rings and bosses.

Under direct legislation a speaker can no longer play the Czar to any purpose.

It will develop the people's interest in public affairs.

It will compel the people to think and act.

It will diminish partisanship and tend to wipe out party lines in discussion and voting. The records we have given of the use of the referendum in the United States and elsewhere prove this.

In its complete form it will enable men to vote their convictions without leaving their party or deserting its candidates, and so will diminish the warping power of party allegiance.

It will work an automatic disfranchisement of the unfit, and bring out a fuller vote of the more intelligent and public spirited who now so frequently stay at home because they do not like endorsing any of the platforms or candidates presented.

It will do more than any other thing except the growth of sympathy and conscience to secure a peaceful solution of the great industrial problems that are threatening our civilization.

It will furnish a strong decentralizing, counterbalancing force to save us from the centralizing, combining, trust and monopoly tendencies that are hastening us toward industrial despotism.

It will save the cost of innumerable impotent petitions and powerless mass-meetings, lobby expenses, abortive investigations, excessive printing of special laws, local acts, private legislation, etc. The cost of legislative sessions of councils, legislatures and so forth could also be reduced; perhaps one chamber of moderate size would be sufficient with the referendum.

The referendum will separate the judgment on men from the judgment on issues.

It will disentangle issues and permit each one to be judged on its own individual merits, thus ridding us of our conglomerate politics, with its mixture of issues in complex, ambiguous platforms, each mixture to be taken only with a specified candidate or set of candidates.

POINTS FOR THE NEGATIVE.

Brief arguments against the Initiative and Referendum.

It must be admitted that a good capable legislature is the best instrument known for law-making. It can be efficient if it will. It cannot be shown that the people through the initiative and referendum are anything like as capable or qualified by organization or average intelligence to legislate as efficiently as a legislature could if the people would elect capable legislators.

If the people refuse to elect good legislators they are to blame; not the system.

The initiative and referendum are unwieldly and clumsy, like using a club to strike a mosquito.

One of the chief arguments for the initiative is that it will be a kind of a scare-crow for legislators. But we are not debating its value as a scare-crow but its value as an efficient means of legislation.

Our present legislatures are not perfect; but it would be far better and easier to improve them than to change our whole system of government. Legislatures, as they now are, are too large and the best method of reform would be to decrease their size, not to enlarge it indefinitely by making a legislature of the whole people.

The initiative and referendum will not do away with bribery and corruption for many signers of the petitionss sell their signatures.

It will not lessen but rather increase the influence of demagogues.

It will not simplify the law for we will have a great number of laws made without reference to or knowledge of existing laws on the same subject.

It will not increase respect for the law and aid in its enforcement for what is everybody's business is nobody's business.

Human interests conflict ehlessly. Law-making involves innumerable adjustments, delicate balancings and distributions and requires a knowledge of all those things that make the efficiency and mark the limitations of laws, a wide knowledge of laws and their success or failure, such wide knowledge of business and of life as to be able to judge the justice and expediency of proposed legislation.

This taking of all power from the hands of our officials will take away any inducement for good men to enter politics, for no one wants to waste his time in being merely a figure head.

It gives unusual power to a well organized minority to put through their views, thus putting more power than ever into the hands of capital.

It will not suppress class legislation but rather increase it, for government by the initiative and referendum is government by minorities.

The people have not time to act in a legislative capacity all the time.

The average citizen is too busy to give sufficient attention

to governmental questions to enable him to vote wisely upon them.

The inevitable effect of the initiative and referendum would be a still further deterioration of legislatures by diminishing their responsibilities, discrediting their acts and robbing them of all finality. Yet one of the chief alleged aims of the initiation and referendum is to improve legislatures.

It is claimed as a merit of the initiative and referendum that if we had them we would not have to use them very much. Why should that be deemed a merit?

Our legislative troubles all arise from our slavery to political parties. We do not vote for the best men for legislators, but for the men backed by party machines. Often we scarcely consider their real qualifications as legislators.

The trouble is not with the character of our legislative system, but with our abuses of it. The thing to abolish is not the system but the abuses.

Our legislative system provides for all the necessities of legislation, deliberating, studying, comparing, adjusting, amending. No better system has ever been devised by man. It combines and summarises all the legislative experience of the race. Gladstone pronounced our constitution the greatest ever devised by man. The advocates of the initiative and referendum wish to undermine our legislative system, overthrow it if need be. We say, correct its abuses; do not change the system till we find something better, something more efficient and trustworthy.

Every advocate of the initiative and referendum old enough to vote has voted for unworthy and incompetent legislators. Then he tries to shift the blame for his own folly and blindness by attacking the system which he has outraged.

The referendum often causes unnecessary and damaging delay. Twice the appropriation for the State University of Oregon was so delayed, and the appropriation itself was nearly lost.

The initiative and referendum are too cumbersome. It is very difficult for the poor man to get his law before the people. Getting the thousands of names to petitions, getting the support of newspapers or the necessary publicity require money and influence. A postal card addressed by a poor man to a competent legislator could gain the same result under our present system.

Law-making is a highly specialized form of social activity. It not only requires general ability, knowledge and character

of the highest type, but special qualifications. There is no more difficult work. There is no greater absurdity than to say that any body can make laws.

The advocates of the initiative and referendum in order to remedy moral defects of our legislative system ignore its practical merits and advantages and the irrational features of their own proposal.

No adequate means of determining the exact form of an initiated bill can be found. The insertion of a single clause of doubtful meaning might vitiate the entire bill. The exact form of a bill is determined by a few interested parties; the mass of the people can only vote to accept or reject the bill as a whole.

A new law does not occupy a field alone. The real law is the result of combining the law with old laws in the same field. No new law can be a simple proposition but an increasingly complicated one requiring infinite adjustments and adaptations for which the initiative and referendum provide no adequate opportunity or facilities. They are therefore impotent as an efficient means of legislation.

It is notorious that men sign all sorts of petitions without even reading them. That is not the kind of carefulness needed to determine the exact form and wording of a law. It would be difficult to find anything more inefficient than petition-signing as a means of law-making.

The referendum empowers a small minority of voters—from 5 to 8 per cent usually—to suspend laws duly passed by the legislature and sometimes to defeat them by a minority of all the voters. This power can be used just as much to hold up good legislation as bad, and introduces an element of uncertainty and confusion into all legislation to which it can be applied.

The claim that Switzerland has been made a political and economic paradise is utterly unsustained by the facts. The people will not vote unless they are compelled to, and then from 20 to 30 per cent cast blank ballots. It cannot be shown that the economic improvement in Switzerland is due to the initiative and referendum, for similar improvement has been made in countries without them.

The initiative and referendum universally result in minority rule. The facts are that on an average less than half as many persons vote on measures as vote for men. The Oklahoma initiative and referendum law requires that the vote for a law must be a majority of the largest vote for any candidate. So many initiative and referendum bills fail to get this that a de-

terminated effort is being made to amend the law so that a minority of those voting may make a law.

Crude and sometimes contradictory measures are often submitted by the initiative and referendum as in the Oregon Fishing Laws, where the net fishermen of the lower Columbia and the Wheel fishermen of the upper Columbia initiated laws at the same time, the former to prohibit wheel-fishing and the latter, net-fishing. Both laws were passed by the voters of Oregon thus closing the great salmon fisheries, so far as the voters were concerned. This was not due to the folly of the voters of Oregon but to the inherent weakness of that method of legislation.

The initiative and referendum involve more or less the old logical fallacy, "argumentum ad Populum." The fact that a law is popular has no direct relation to its justice or efficiency; unjust laws must be popular with somebody or they would be repealed. The essential question concerning any law is not who passed it or whose selfish interests it conserves, but whether it is just, right, and expedient. A legislature has infinitely greater facilities for enacting such laws than the masses of the people.

We have "land slides," waves of public feeling which require the most stable government to withstand. The people often reverse their judgment. The very idea of a constitution is something established; something that will remain stable in times of storm and stress. Much of the talk about appealing to the people is pure demagoguery.

The only rule that can bring happiness and peace to a people is the rule of right and reason. We cannot hope to secure these without using the proper means and facilities for investigation and deliberation. Such legislation by legislatures is as clearly possible as it is impossible by the initiative and referendum.

A pertinent fact which must not be overlooked is that all the faults of our legislative system are well and long known, while there has not yet been time to reveal all the faults and weaknesses of the initiative and referendum. As a piece of legislative machinery the legislature is evidently superior. The trouble is not with the system but with the people who do not elect capable men. This is the sole difficulty.

Even the stockholders of a great corporation delegate their legislation to directors who are able to study the details of pro-

posed legislation and its working as the mass of the stockholders are not.

It must be admitted that the masses are much more easily interested in men than in measures. If they fail in choosing capable men, they would be even more likely to fail in enacting measures. The quality of legislators has steadily declined—almost anybody can be elected to the legislature. At best it is a stepping-stone to something higher. The people are solely to blame for the quality of the legislators whom they elect. If they are faithless in a few things, what possible reason have we to assume that they will be faithful in many things?

Good legislation is impossible without deliberation and the resulting amending and adjusting and modifying. All this is impossible with the initiative and referendum; every bill must be accepted or rejected as it is submitted. Voters will accept bills with serious defects rather than defeat them altogether. This would soon produce a chaos of conflicting and contradictory legislation.

What are the courts to do when two initiative laws conflict as in the case of the Oregon salmon fishing cases? Shall they be given power to annul an initiated law? Shall an initiated law have equal force with a constitutional provision? The responsibility for consistent legislation would only be shifted from a responsible legislature to the irresponsible framers of initiative petitions.

That legislation is sometimes unsatisfactory is no possible argument for the initiative. We can not expect perfect laws and there is no proof that the people will do any better.

No men, however intelligent or incorruptible, can legislate without facts. Good legislation in this day is largely a matter of scholarship or expert knowledge. The best intentions are no substitute for complete and exact knowledge. The vital thing, then, in legislation is the instrumentalities for furnishing such knowledge. Strange to say, they are almost wholly neglected; the legislator must furnish them himself if he has them at all. In the solution of a legislative problem the legislator should have before him all the pertinent experience of the race in dealing with it, all that science of every branch of human endeavor can contribute to its solution.

The Legislative Reference Bureau of university extension is just such an instrumentality. In the advanced study of such subjects as Sociology, History, Economics, Politics Science, etc., vast accumulations of just such materials as the legislator

needs are indispensable, and the rank of a university is largely determined by its array of such facilities. By modern methods of indexing, cataloging, and the assistance of a librarian, these accumulations can be made available to the intelligent legislator.

In framing a law the legislator would have before him all the experience of other states in dealing with the same problem. Instead of endlessly repeating the mistakes and blunders of the past, then, there would be a possibility of improvement, or at least of utilizing the experience of others. Let it be once understood that without such knowledge no legislator is competent to frame a law or even to vote upon it and only such men would be sent to legislatures.

The only hope of the Initiative and Referendum is that they will improve legislatures; but this can be done far more certainly and easily by use of university extension, and sending men to legislature who are competent to use it. We have the accumulations of learning anyhow at every state university; all we need is to utilize them in legislation.

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